Flamingo Las Vegas Operating Company, LLC *and* International Union, Security, Police and Fire Professionals of America (SPFPA). Cases 28–CA–069588 and 28–CA–073617

April 25, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

On June 25, 2012, Administrative Law Judge Gregory Z. Meyerson issued the attached decision. The Respondent filed exceptions and a supporting brief, the Acting General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, as modified, and to adopt the recommended Order as modified and set forth in full below.[2]

This case arises in the context of a union organizing drive among the Respondent's security officers. The judge found that the Respondent committed several violations of Section 8(a)(1) of the Act. We adopt most of the judge's findings.[3] However, for the reasons set forth below, we reverse the judge and dismiss two 8(a)(1) allegations, one involving the alleged oral promulgation and enforcement of a work rule that employees had to follow the chain of command to resolve their complaints, and the other involving statements allegedly creating an impression among its employees that their union activities were under surveillance.

I. RELEVANT FACTS

The Respondent is one of five properties forming a "pod" of properties under Caesars Entertainment, Inc. The "pod," known as "HIFOB," has a senior chain of command including Assistant General Manager Paul Baker and Security Director Eric Golebiewski. The HIFOB security operation under Golebiewski's direction includes 7 security shift managers (including Charles Willis), 11 security shift supervisors, and a number of field training officers or "FTO Golds," who are in training for supervisory positions.

The casino and hotel industry in Las Vegas is very competitive, and HIFOB therefore regularly takes customer surveys to determine how well its properties are meeting customer needs and how satisfied customers are with the level of service they receive from HIFOB employees. As a result of unacceptably low customer service scores, in late August and early September 2011 HIFOB held a series of meetings with supervisors and managers emphasizing the importance of customer service and introducing the concept of "Believe or Leave"—intended to stress to employees that they needed to believe in the importance of customer service.

Francis Bizzarro is a security officer employed by the Respondent since August 2010. The judge found that Bizzarro was the security officer most active in trying to organize the Respondent's facility on behalf of the Union. He originally contacted the Union seeking representation and distributed union authorization cards to those security officers expressing interest.

II. WORK RULE

Bizzarro and Assistant General Manager Baker knew each other socially before Bizzarro began working for the Respondent. In fact, Baker gave Bizzarro a reference

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify the judge's recommended Order to conform to our findings herein, and we shall substitute a new notice to conform to the Order as modified and to the Board's standard remedial language.

[3] For the reasons stated in the judge's decision, we affirm his findings that the Respondent violated Sec. 8(a)(1) by threatening its employees with unspecified reprisals because the employees engaged in concerted activities; creating an impression among its employees that their union activities were under surveillance by displaying a blank union authorization card; interrogating its employees about their union membership, activities, and sympathies; soliciting its employees' complaints and grievances, and promising them improved terms and conditions of employment to dissuade them from supporting the Union; promising its employees improved terms and conditions of employment by informing them that an objectionable supervisor had been transferred from its facility to dissuade them from supporting the Union; threatening its employees with more strictly enforced work rules and job loss if they selected the Union as their collective-bargaining representative; creating an impression among its employees by printed communication that their union activities were under surveillance; threatening employees with discipline or discharge if they selected the Union as their collective-bargaining representative; and threatening its employees by informing them that they were disloyal because they supported the Union and engaged in union activity.

In view of the judge's finding that the Respondent violated Sec. 8(a)(1) by threatening its employees with unspecified reprisals because the employees engaged in concerted activities, we find it unnecessary to pass on whether the Respondent also threatened its employees with unspecified reprisals because the employees engaged in union activity. Such a finding would not materially affect the remedy. In light of the judge's finding that the Respondent unlawfully created an impression of surveillance by displaying a blank union authorization card, Member Block also would find it unnecessary to pass on whether the Respondent violated Sec. 8(a)(1) by creating an impression of surveillance through its circulation of the "BIZARRE" flyer on October 16, 2011.

We note that there are no exceptions to the judge's dismissal of certain complaint allegations.

for the security officer position. In mid-January 2012, Bizzarro was on his way into work when he encountered Baker. After Bizzarro asked Baker how he was doing, Baker replied, "Not so well." Yelling and red-faced, Baker then told Bizzarro he was upset and felt "betrayed" because Bizzarro had tried to bring the Union into the facility and thereby placed Baker's job in jeopardy. We agree with the judge that these statements conveyed an unlawful threat of discharge.

However, Baker also made several comments regarding the "chain of command." Baker stated that all of Bizzarro's issues had been taken care of by management, questioned why Bizzarro had not gone to human resources with his complaints, and asked how Bizzarro could get the Union involved with the security officers.

The judge concluded that Baker, "for all practical purposes," was promulgating a rule requiring employees to bring complaints through the human resources department and through the chain of command. The judge then went on to analyze this "rule" under the Board's two-step inquiry for determining whether the maintenance of a rule violates the Act. Applying the standard articulated in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), he found that such a rule would reasonably be construed by employees as prohibiting Section 7 activity, thereby chilling those employees from exercising their right to organize.

The Respondent argues, and we agree, that Baker did not promulgate a rule. Although the Board has not articulated a specific standard defining when an oral statement by a supervisor constitutes a rule, *St. Mary's Hospital of Blue Springs*, 346 NLRB 776 (2006), is instructive. In *St. Mary's*, a supervisor reprimanded an off-duty employee who was an active union supporter for telephoning another employee to discuss a labor-management issue while that employee was working at the hospital. Id. at 776. During a heated phone call, the supervisor told the off-duty employee, "You cannot call and you cannot talk and you cannot call the nurses while I am here and talk about the union." Id. at 776–777. Noting that the supervisor was reprimanding one employee specifically, the Board found that the supervisor's comments "could not reasonably be interpreted as establishing that he intended to implement a new, more restrictive solicitation policy regarding employees in the hospital." Id. at 777.

The same reasoning applies here. Baker directed his chain of command comments solely to Bizzarro. Further, there is no evidence that a "chain of command" rule was ever communicated to the security officers as something they were expected to obey. To the contrary, Bizzarro and the other officers involved in the union organizing campaign had been independently pursuing their grievances for at least 3 months when Baker made his comments to Bizzarro. Apart from Baker's isolated statements to Bizzarro, there is no evidence that any of the Respondent's managers objected to a failure to follow the chain of command. Under these circumstances, we find that Baker's comments regarding the "chain of command" could not reasonably be interpreted as implementing a new policy regarding how employee complaints were to be handled. Accordingly, we find that the Acting General Counsel failed to establish that the Respondent, by Baker, promulgated an oral "chain of command" rule, and we dismiss this allegation.[4]

III. IMPRESSION OF SURVEILLANCE

In January 2012, Supervisor Willis made several comments to security officers regarding an unnamed officer that Willis described as the "instigator of the union situation" who was given his job as a favor because he had family problems, and also as someone trying to represent the employees who got his job because he was "juiced in."[5]

The judge determined that it would have been obvious to the security officers who heard the remarks that Willis was referring to Bizzarro. Even though he found that it was at least an "open secret" that Bizzarro was the chief union organizer, the judge determined that Bizzarro had not directly represented himself to management as such. On that basis, the judge found that Willis' comments violated Section 8(a)(1) by creating an impression of surveillance. The Respondent excepts, arguing that at the time of Willis' comments Bizzarro was a self-identified union leader, and therefore employees reasonably would not understand Willis' comments as creating an impression of surveillance. We agree.

The Board's test for determining whether an employer has created an impression of surveillance is whether an employee would reasonably assume from the statement in question that his or another employee's union activities had been placed under surveillance. *Mountaineer Steel, Inc.*, 326 NLRB 787, 787 (1998), enfd. 8 Fed.

[4] There is no other basis on which to find Baker's chain of command comments unlawful. By contrast, we agree with the judge that the Respondent violated Sec. 8(a)(1) when FTO Gold Larry Myatt threatened Bizzarro with unspecified reprisals for allegedly inciting other security officers against the Respondent's "believe or leave" program. Myatt's instructions violated the Act, and ordering the Respondent to cease and desist from repeating any similar instructions in the future will fully remedy the violation, regardless of whether those instructions take the form of a threat or a work rule. Therefore, we need not and do not pass on the judge's additional finding that Myatt promulgated an unlawful work rule with these instructions.

[5] The judge took judicial notice that the term "juiced" is a colloquial expression meaning having or using influence to get some benefit.

Appx. 180 (4th Cir. 2001) (citing *United Charter Service*, 306 NLRB 150 (1992)). Applying that test here, we find that the Respondent's employees would not so assume. Contrary to the judge's finding, it is clear from the record evidence that by the time of this incident Bizzarro had directly represented himself to management as involved in the union organizing process. On January 7, 2012, Bizzarro responded to email messages regarding the union organizing campaign, noting, among other things, that he had asked management if a union representative could come speak to the officers, and offering his services to officers if they had questions about the Union. Those messages were sent to most, if not all, of the Flamingo security officers, and all "HIFOB Security Supervisors" were copied as well. The complaint alleges that Willis' comments were made on January 15, 2012, and the judge credited testimony from security officers Ty Evans and Christopher Rudy that placed the comments in mid-January and late January, respectively. So, at the time of Willis' comments, Bizzarro had openly identified himself to management and to the other security officers as a union organizer. In these circumstances, we find that security officers hearing Willis' remarks would not reasonably conclude that he learned of Bizzarro's union activity through surveillance. We therefore dismiss this allegation.

ORDER

The National Labor Relations Board orders that the Respondent, Flamingo Las Vegas Operating Company, LLC, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Instructing employees that they should not incite other employees and should keep their mouths shut or there will be consequences, or otherwise instructing employees not to engage in concerted activities.

(b) Threatening employees with more strictly enforced work rules and job loss if they select the Union as their collective-bargaining representative.

(c) Threatening employees with discipline, including discharge, if they select the Union as their collective-bargaining representative.

(d) Threatening employees by informing them that they were disloyal because they supported the Union and engaged in union activities.

(e) Coercively interrogating employees about their union membership, activities, and sympathies.

(f) Soliciting complaints and grievances from employees and promising improved terms and conditions of employment in order to discourage employees from supporting the Union.

(g) Promising employees improved terms and conditions of employment by informing them that an objectionable supervisor had been transferred from its facility to dissuade them from supporting the Union.

(h) Creating an impression among employees by printed communication that their union activities were under surveillance.

(i) Creating an impression among employees that their union activities were under surveillance by displaying a blank union authorization card.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at the Flamingo, O'Sheas, and Bill's, all located in Las Vegas, Nevada, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent at all three properties mentioned above and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former security officers employed by the Respondent at any time since September 3, 2011.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT instruct you that you should not incite other employees and should keep your mouths shut or there will be consequences, or otherwise instruct you not to engage in concerted activities.

WE WILL NOT threaten you with more strictly enforced work rules and job loss if you select International Union, Security, Police and Fire Professionals of America (SPFPA) (the Union) as your collective-bargaining representative.

WE WILL NOT threaten you with discipline, including discharge, if you select the Union as your collective-bargaining representative.

WE WILL NOT threaten you by informing you that you are disloyal because you support the Union and engage in union activity.

WE WILL NOT coercively interrogate you about your union membership, activities, and sympathies.

WE WILL NOT solicit your complaints and grievances and promise you improved terms and conditions of employment in order to dissuade you from supporting the Union.

WE WILL NOT promise you improved terms and conditions of employment by informing you that an objectionable supervisor has been transferred from the property to dissuade you from supporting the Union.

WE WILL NOT create an impression among you through our printed flyers that we are watching your union activity.

WE WILL NOT create an impression among you by displaying a blank union authorization card that we are watching your union activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

FLAMINGO LAS VEGAS OPERATING COMPANY, LLC

Larry A. Smith, Esq., for the General Counsel.

John D. McLachlan, Esq., of San Francisco, California, for the Respondent.

Scott A. Brooks, Esq., of Detroit, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GREGORY Z. MEYERSON, Administrative Law Judge. Pursuant to notice, I heard this case in Las Vegas, Nevada, on March 13–16, 2012. This case was tried following the issuance of an order consolidating cases, consolidated complaint, and notice of hearing (the complaint) by the Regional Director for Region 28 of the National Labor Relations Board (the Board) on February 24, 2012. The complaint was based on a number of unfair labor practice charges, as captioned above, filed by International Union, Security, Police and Fire Professionals of America (SPFPA) (the Union or the Charging Party).[1] It alleges that Flamingo Las Vegas Operating Company, LLC (the Respondent, the Employer, or the Flamingo) violated Section 8(a)(1) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying the commission of the alleged unfair labor practices.[2]

Counsel for the General Counsel, counsel for the Charging Party, and counsel for the Respondent appeared at the hearing, and I provided them with the full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue and file briefs. Based on the record, my consideration of the briefs filed by counsel for the General Counsel and counsel for the Respondent,[3] and my observation of the demeanor of the witnesses,[4] I now make the following.

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, the answer admits, and I find that at all times material, the Respondent has been a limited liability company, with an office and place of business in Las Vegas, Nevada (the Respondent's facility), where it has been engaged in operating a hotel and casino providing food, lodging, and gaming. Further, I find that during the 12-month period ending November 23, 2011, the Respondent, in conducting its business operations as just described, derived gross revenues in excess of $500,000; and during the same period of time, also purchased and received at its facility goods valued in excess of

[1] GC Exhs. 1(a) through (v), the "Formal Papers," establish the filing and service of the enumerated charges as alleged in the complaint.

[2] All pleadings reflect the complaint and answer as those documents were finally amended at the hearing. (See GC Exh. 1(q).)

[3] Counsel for the Charging Party did not file an independent brief, but, rather, incorporated and adopted counsel for the General Counsel's brief.

[4] The credibility resolutions made in this decision are based on a review of the testimonial record and exhibits, with consideration given for reasonable probability and the demeanor of the witnesses. See *NLRB v. Walton Mfg. Co.,* 369 U.S. 404, 408 (1962). Where witnesses have testified in contradiction to the findings herein, I have discredited their testimony, as either being in conflict with credited documentary or testimonial evidence, or because it was inherently incredible and unworthy of belief.

$50,000 directly from points located outside the State of Nevada.

Accordingly, I conclude that the Respondent is now, and at all times material has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that at all times material herein, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

The Respondent is one of five properties forming a "pod" of properties under Caesars Entertainment, Inc., which is the parent entity. The properties in the pod are: the Flamingo,[5] Harrah's, Imperial Palace, O'Sheas, and Bill's Gamblin Hall and Saloon. These five properties are collectively referred to by Ceasars Entertainment in its business as "HIFOB." HIFOB is an acronym consisting of the first letter of each of the five properties in the pod. Although there is significant interaction among some of the properties, especially the Flamingo, O'Sheas, and Bill's, the Respondent consists solely of the Flamingo, which is the only legal entity charged in this proceeding. The HIFOB senior chain of command consists, in relevant part, of President and General Manager Rick Mazer, Assistant General Manager Paul Baker, and various vice presidents for several departments. Eric Golebiewski is the security director for HIFOB.

The HIFOB security operation is extensive. Under Golebiweski's direction is the investigations manager, Jack Burgess, three investigators and seven security shift managers. Four of the seven security shift managers are assigned to the Flamingo, and include Charles Willis, Cedric Johnson, Keith Berberich, and John Schultz. There are 11 security shift supervisors for the 5 HIFOB properties under the security shift managers, the following 6 of whom are assigned to the Flamingo: Curtis Walker, Janice Miller, Russ Roake, Kevin Quaglio, Thomas Health, and Zina Miner. Further, there are a number of field training officers (FTO Golds), who are security officers in training for supervisor positions, employed at the Flamingo, including Dan Hayes and Larry Myatt.[6]

The Respondent's operations require security officers 24 hours a day, 365 days a year. There are approximately 300 security officers employed among the 5 HIFOB properties. As set forth in the Caesars Entertainment job description for security officer, their "main function is to provide a friendly and safe environment for [hotel/casino] guests and team members while protecting company assets." (GC Exh. 4.) The security officers may rotate through various properties as part of their shifts. Approximately 120 of those security officers rotate through the Flamingo, O'Sheas, and Bill's as part of a posted schedule limited to those three properties. Between 50 and 70 of those security officers are assigned to the Flamingo.

The security officers perform various tasks and interact with a variety of people. In the course of their job duties, while they patrol their assigned "posts," the security offices perform two types of "sweeps." As needed, they perform sweeps of "undesirables," such as homeless persons, prostitutes, pimps, thugs, drug dealers, etc. These security sweeps are often conducted by several security officers acting collectively, and are intended to remove these undesirables from the facility. Security officers also perform "total service" sweeps. This is the process by which they meet and greet customers and perform certain steps that involve engaging the customers in conversations so as to make them feel comfortable and welcome at the facility. While it is not totally clear, the record indicates that during a security guard's shift, he or she is expected to engage at least 6 customers in this interaction. Shift supervisors will periodically observe security officers engaged in total service sweeps and grade the officers on their contact with the guests. This grading process is called the "spotlight."

Security officers attend preshift meetings held at the beginning of every shift. It is at these meetings that the officers receive information from various supervisors, including procedures, policies, fliers, alerts, and anything that they need to know in order to properly perform their shifts. The preshift meetings generally last between 15 to 30 minutes, although occasionally much longer.

Francis Bizzarro is a security officer employed by the Respondent since August 2010. Prior to being hired, Bizzarro and his wife had a friendly relationship with the Respondent's assistant general manager, Paul Baker, and his wife. In fact, Baker recommended Bizzarro for the security officer position, and one would logically assume that he was instrumental in helping Bizzarro secure employment. It is clear from the testimony of numerous witnesses that Bizzarro was the security officer most active in trying to organize the Respondent's facility on behalf of the Union. He originally contacted the Union seeking representation and was the person who distributed union authorization cards to those security officers expressing an interest. At the time of the hearing, Bizzarro was still employed as a security officer by the Respondent.

The following chronology of events has been stipulated to by the parties (Jt. Exh. 1) and is not in dispute: On November 4, 2011, the Union filed a representation petition in Case 28–RC–068280; on November 17, 2011, the Union filed a petition in Case 28–RC–069125; on November 23, 2011, the Union filed a petition in Case 28–RC–069491, but prior to doing so it withdrew the two earlier petitions; on November 30 and December 1, 2011, a hearing was conducted at the offices of the Board in Las Vegas, Nevada, in Case 28–RC–069491; on December 20, 2011, the Regional Director for Region 28 issued a Decision and Direction of Election in Case 28–RC–069491;[7] subsequent-

[5] The Margaritaville Casino is physically located within the Flamingo, and does not constitute a separate entity.

[6] The parties have agreed that Paul Baker, Eric Golebiewski, Charles Willis, Cedric Johnson, Keith Berberich, Kevin Quaglio, and Larry Myatt are all supervisors and agents as defined by the Act.

[7] I take administrative notice of the following documents filed in connection with Case 28–RC–069491: the Decision and Direction of Election (CP Exh. 1); the Board's Order denying the Employer's request for review of the Regional Director's Decision and Direction of Election (CP Exh. 2); and the Employer's request for review (CP Exh.

ly, an election was scheduled for January 19, 2012; however, on January 17, 2012, the Regional Director issued an order postponing election indefinitely pending the investigation and disposition of an unfair labor practice charge filed by the Union against the Respondent; and finally, on January 26, 2012, the Regional Director issued a corrected order postponing election indefinitely pending the investigation and disposition of the unfair labor practice charge in Case 28–CA–069588 filed by the Union against the Respondent.

B. The Dispute

It is the position of the General Counsel that the Respondent engaged in a campaign designed to thwart its employees' protected concerted activity and subsequently their union activity. The Respondent's alleged unlawful conduct included: threatening employees, promulgating and enforcing overly broad and discriminatory work rules, creating the impression of surveillance of employees' union and protected concerted activities, interrogating employees about their union sympathies, soliciting employee complaints and grievances, promising increased benefits and improved terms and conditions of employment, supervising its employees more closely, and discriminatorily restricting access to its bulletin boards. Such conduct is alleged in the complaint to have constituted an unlawful attempt by the Respondent to interfere with, restrain, and coerce its employees in the exercise of their Section 7 rights.

Further, the General Counsel contends that the Respondent specifically targeted Francis Bizzarro for harassment because he was the employee most active in engaging other employees in protected concerted activity, and who was the primary organizer and principal union supporter among the security officers. The complaint alleges that all such conduct constitutes a violation of Section 8(a)(1) of the Act.

Counsel for the Respondent contends that none of its actions were in violation of the law. Rather, it is the position of the Respondent that its employees were free to engage in an open campaign in support of the Union, and did, in fact, communicate openly with each other by means of the Employer's email system and through the posting of union notices and fliers on a bulletin board at the Flamingo.

Regarding Francis Bizzarro, counsel argues that Bizzarro made no effort to hide or disguise his role as the principal union organizer. Moreover, it is the Respondent's position that Bizzarro was simply a disgruntled, insubordinate employee whose incredible testimony was an attempt to support meritless unfair labor practice charges filed in an effort to block the holding of a representation election, which the Union feared that it would lose. According to counsel, no reprisals were taken against Bizzarro, other union supporters, or any other employees because of their union or protected concerted activities. Finally, counsel argues that any oral statements or written material about the Union emanating from the Respondent or its managers and supervisors was the lawful expression of opinion, as permitted under Section 8(c) of the Act.

3). While the Regional Director's Decision and Direction of election is not controlling regarding those issues before me, it constitutes some evidence on said issues, and may be relied on by me to the extent noted.

IV. ANALYSIS AND CONCLUSIONS

A. The Protected Concerted Activity

The Respondent stresses to all its employees the importance of customer service. Without doubt, the casino and hotel industry in Las Vegas is very competitive. To that end, HIFOB regularly takes customer surveys to determine how well its properties are meeting the needs of its customers, and how satisfied those customers are with the services that they receive. As a result of those surveys, HIFOB determined that its "scores" were unacceptably low. Therefore, from late August through September 2, 2011,[8] a number of mandatory meetings for supervisors and managers were conducted at all HIFOB properties to address those low scores.

During the hearing a number of supervisors testified about these meetings, and no evidence was offered to rebut their testimony. Therefore, it is undisputed that at those meetings the presenters again stressed to managers and supervisors the critical importance of customer service and the need to immediately begin to raise the low scores the HIFOB properties had been receiving. Apparently in an effort to emphasize the importance of this mission, the phrase "believe or leave" was introduced. It is also undisputed that this phrase was intended to be used by managers and supervisors to motivate employees at all the HIFOB properties and in all departments within those properties. There is no credible evidence to suggest that the phrase was intended only for the Flamingo or, even more restrictive, just for the Respondent's security department.

Much testimony was taken during the hearing regarding the meaning of the phrase "believe or leave" as explained to the security officers by their supervisors. Attendees at the supervisors' meetings had been told to return to their respective HIFOB properties and departments and to instruct their employees on what had been stressed to them regarding customer service, apparently including the "believe or leave" phrase. In early September, including specifically on September 3, there were pre-shift meetings held with the Respondent's security officers where these matters were discussed.

1. The preshift meeting of September 3, 2011

In complaint paragraphs 5(a), (b), and (c) the General Counsel alleges that on September 3, certain conduct of the Respondent's supervisors violated the Act. It was at the time of the preshift briefing on that date that the assembled security officers were first told about the Respondent's new "believe or leave" phrase. Contrary to the arguments of counsel for the General Counsel, I do not view this statement as a threat to terminate employees who engaged in protected concerted activity, but, rather, simply as part of a management philosophy intended to motivate the security officers to improve their customer service scores. Such a philosophy is clearly legitimate, and the phrase was intended to be utilized throughout the HIFOB properties and certainly not limited to the Flamingo's security officers.

According to the testimony of Francis Bizzarro, during this preshift meeting certain of the security officers raised a number of issues that they had previously been discussing only among

[8] All dates are in 2011, unless otherwise indicated.

themselves. Bizzarro mentioned that in earlier conversations between the security officers that they had discussed complaints that they had about the "shortening of breaks, and the memorization of [spotlight] cards," and about the use of the full names of security officers on their name tags. The "spotlight" was the procedure that supervisors used to rate security officers on their interaction with guests. The officers were expected to follow a kind of script or outline in these interactions. The name tag issue involved the officers not wanting to have their full last names displayed on the tag so as to prevent "undesirables" from being able to trace them to their homes.

While Bizzarro testified that these were the same issues raised by the security officers at the September 3 briefing, he is very vague and unclear regarding who actually raised these issues. He mentioned a number of other officers who were with him at this briefing, including Eric Cregeen, Brian Meadows, and Tomas Williquer, but is rather unfocused when asked to relate specifically which officers complained about these matters during the meeting. Further, the other officers do not seem any more focused regarding this meeting than Bizzarro, and none of them seems able to take ownership of the alleged remarks.

Bizzarro testified that during the meeting Supervisor Quaglio told the security officers that if they were not happy with the total service sweeps, that they could take their resumes and go apply to work at the Wynn Casino. Quaglio alleged advised them that as there existed a 14-percent unemployment rate in the Las Vegas area that there were plenty of unemployed people waiting to get security officer jobs, and if they did not like what management was doing that they could look for a job elsewhere. Quaglio denies making such threatening statements.

After listening to Bizzarro testify regarding the September 3 pre-shift meeting, I had the strong impression that he was doing his utmost to tie the "believe or leave" statement to the complaints allegedly made by security officers during the meeting. However, I do not believe such a connection has been made. Bizzarro is an intelligent witness, and he clearly understood that employees are engaged in protected conduct when they complain to their supervisors about wages, hours, or working conditions. However, even assuming such complaints were made by the security officers during the meeting, and even further giving Bizzarro the benefit of the doubt and concluding that Quaglio made the statement that if employees were unhappy they could seek work elsewhere, I do not believe such comments by Quaglio were related to employee complaints. Rather, I believe that those comments were directly related to the "believe or leave" phrase and the HIFOB-wide campaign to improve customer service scores.

Certainly the big news at the preshift meeting was the "believe or leave" phrase and the campaign to improve the customer service scores, which program the supervisors had brought back with them from the recent HIFOB-wide supervisors' meetings. That was likely the matter discussed most at the preshift meeting. It is certainly conceivable that Quaglio in emphasizing this new program informed the security officers that any employee who could not get behind the program to improve customer service scores, and who in effect could not "believe" in the program, should "leave" the Respondent's employment. I see nothing improper about telling employees that they are expected to implement the Respondent's new policy and program or to seek work elsewhere. I do not believe that it is reasonable to conclude, based on the record evidence, that any threats were made to employees regarding their complaints about working conditions, assuming that such complaints were even made at this meeting.

I conclude that any suggestion by Quaglio that employees seek work elsewhere was not made in connection with those employees' protected concerted activity, and that it would not have been reasonable for employees to have assumed so. Accordingly, any such statement would not constitute a violation of the Act. Therefore, I shall recommend to the Board that complaint paragraph 5(a) be dismissed.

In any event, it seems that Bizzarro was unhappy with the tone of the preshift meeting. He testified that near the end of the meeting he "mentioned to security assistant manager (FTO Gold) Larry Myatt, that Kevin Quaglio's comments were threatening and harassing toward the officers."[9] He contends that Myatt then ordered him out of the briefing room and into the manager's office. Allegedly, Myatt said that Bizzarro needed to stop talking as he was "inciting the men." At that point, according to Bizzarro, Myatt, Bizzarro, and Supervisor Cedric Johnson went into the manager's office. Once in the office, Myatt allegedly repeated that Bizzarro's comments were "inciting the men," and that he "needed to stop making those comments or there would be consequences." Myatt allegedly went on to deny that Quaglio's remarks had been threatening or harassing, and that Bizzarro "should keep [his] mouth shut." According to Bizzarro, he responded by simply asking if he could return to work, which he was permitted to do. Bizzarro testified that during this exchange in the manager's office, Cedric Johnson had remained silent. Further, Bizzarro contends that he filed a complaint with the human resources department regarding this incident, but is uncertain as to what happened to it. When he subsequently inquired about the status of his complaint, he was told by human resources personnel that it had "been taken care of."

During his testimony, Myatt totally denied that he had spoken to Bizzarro in the manager's office at any time around September 3, and further denied that he had made any threatening statements to Bizzarro regarding Bizzarro's concerted conduct. He did recall a different meeting with Bizzarro in the "coffee room" in late October or early November about Bizzarro allegedly interrupting preshift meetings with indignant remarks about the way Myatt was doing his job. Myatt allegedly explained to Bizzarro that such comments should be made to Myatt in private and not in front of the other officers. Cedric Johnson testified that while he could not recall the specific date of the meeting that he attended with Bizzarro and Myatt, he denied that during that meeting Myatt had used the word "incite." He remembered that Myatt had brought Bizzarro into the manager's office to talk about "disrupting the briefing." According to Johnson, Myatt told Bizzarro that, "if he has a prob-

[9] During the hearing, the parties stipulated that Larry Myatt, whose correct job title is field training officer gold (FTO Gold), is a supervisor as defined in the Act.

lem with something he needs to pull [Myatt] aside and not disrupt the briefing making snide remarks or comments during—while [Myatt's] trying to give out information." Allegedly, Bizzarro agreed that in the future he would do so.

Preliminarily, I would note that I found Bizzarro to have a tendency to exaggerate and embellish his testimony, and to over emphasize certain events so as to place himself and his actions in the best possible light. Further, it is clear to me that he has much of his personal self worth invested in trying to obtain a successful outcome of this case. That having been said, I do not believe that he totally fabricated events and statements, and I conclude that, generally, there was an element of truth in much of his testimony. With that in mind, I believe that at the September 3 preshift meeting that he did say that Quaglio's comments were threatening and harassing toward the officers, which elicited a response from Myatt that Bizzarro should be quiet as he was "inciting" the other officers, or words to that effect. Further, I believe that Myatt also told Bizzarro that if he did not stop making such comments, there would be "consequences." It is not clear to me whether Myatt's statements were made in the preshift briefing room or immediately thereafter in the manager's office, or perhaps in part in both places. In any event, I am convinced that the words were spoken by Myatt.

I do not credit Myatt's denials, which seemed to me half hearted and made with little conviction. His attempt to move the incident to another time and event did not seem reasonable or credible. While Johnson's version of the incident was a little more believable than Myatt's version, it still lacked the sort of detail that Bizzarro supplied. As I have noted above, I find nothing improper about the Respondent's use of the phrase "believe or leave," or the way in which it was presented to the security officers. Nevertheless, Bizzarro reacted to it as if a threat had been made, and expressed his concerns out loud. Those expressed concerns resulted in Myatt actually making a threat. Having heard Bizzarro testify, I believe that his version of the event had the ring of authenticity about it and is credible.

Section 7 of the Act guarantees employees "the right to self-organization, to form, join, or assist labor organizations . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Employees are engaged in protected concerted activities when they act in concert with other employees to improve their working conditions. *Eastex, Inc. v. NLRB*, 437 U.S. 556 (1987); *NLRB v. Washington Aluminum Co*., 370 U.S. 9, 14 (1962). An employer may not retaliate against an employee for exercising the right to engage in protected concerted activity. *Triangle Electric Co.*, 335 NLRB 1037, 1038 (2001); *Meyers Industries*, 268 NLRB 493, 479 (1984). An employer violates Section 8(a)(1) of the Act when it discharges an employee, or takes some other adverse employment action against him, for engaging in protected concerted activity. *Rinke Pontiac Co*., 216 NLRB 239, 241, 242 (1975). Further, the Board has found that an employer violates the Act when threats of an "unspecified reprisal" are made because employees engage in union activity. Certainly, by analogy, the same would apply to protected concerted activity. Cf. *Atlas Logistics Group Retail Services (Phoenix)*, 357 NLRB 353, 353 fn. 2 (2011); *St. Margaret Mercy Healthcare Centers*, 350 NLRB 203, 205 (2007).

The Board, with court approval, has construed the term "concerted activities" to include "those circumstances where individual employees seek to initiate or induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management." *Meyers Industries,* 281 NLRB 882 (1986), affd. 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988); See also *NLRB v. City Disposal Systems,* 465 U.S. 822, 831 (1984) (affirming the Board's power to protect certain individual activities and citing as an example "the lone employee" who "intends to induce group activity").

Based on the above, I conclude that on about September 3, 2011, Bizzarro was engaged in protected concerted activity when he challenged the statements that Quaglio had made regarding the "believe or leave" policy by saying that such statements were threatening and harassing to the security officers. It is immaterial whether the statements made by Quaglio were in fact threatening or harassing. It is sufficient simply that Bizzarro said so. Certainly this expressed concern related directly to the conditions under which Bizzarro and his fellow security officers worked. Therefore, I also conclude that Myatt's related comments to Bizzarro that he was "inciting" the other security officers and that he should keep his "mouth shut," or there would be "consequences," or words to that effect, constituted a threat of an unspecified reprisal because Bizzarro had engaged in protected concerted activity.

Accordingly, I find that these comments made by Myatt to Bizzarro constituted an unlawful threat of an unspecified reprisal in violation of Section 8(a)(1) of the Act, as alleged in paragraph 5(b) of the complaint.

It is alleged in complaint paragraph 5(c) that by making the statements to Bizzarro on September 3 attributed to Myatt, that the Respondent had promulgated and enforced an overly-broad and discriminatory work rule prohibiting its employees from engaging in concerted activities. I agree. As noted above, I have concluded that Myatt told Bizzarro he was "inciting" the other security officers and that he should keep his "mouth shut," or there would be "consequences," or words to that effect.

In determining whether the existence of specific work rules violates Section 8(a)(1) of the Act, the Board has held that, "the appropriate inquiry is whether the rules would reasonably tend to chill employees in the exercise of their Section 7 rights." *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). Further, where the rules are likely to have a chilling effect on Section 7 rights, "the Board may conclude that their maintenance is an unfair labor practice, even absent evidence of enforcement." Id. See also *Blue Cross-Blue Shield of Alabama*, 225 NLRB 1217, 1220 (1976).

The Board has further refined the above standard in *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646 (2004), by creating a two-step inquiry for determining whether the maintenance of a rule violates the Act. First, if the rule expressly restricts Section 7 activity, it is clearly unlawful. If the rule does not, it will nonetheless violate the Act upon a showing that: "(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in

response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights. Id. at 647; See *Northwestern Land Services,* 352 NLRB 744 (2009) (applying the Board's standard in *Lutheran Heritage-Village,* supra at 647).

Myatt's statement to Bizzarro was an explicit restriction of the Section 7 right to engage in concerted activity. Under the Act, Bizzarro was fully at liberty to complain to his fellow officers and to management regarding the Respondent's "believe or leave" policy. The Respondent has attempted to restrict that right through Myatt's disparaging statement that Bizzarro was "inciting" the other security officers, and through Myatt's admonition and threat that Bizzarro should keep his "mouth shut," or there would be "consequences." Such conduct by the Respondent would reasonably chill employees in the exercise of their Section 7 rights. Regardless of whether there was any further attempt to enforce the rule, a violation had occurred. Clearly, the rule was promulgated in response to Bizzarro's concerted activity in criticizing the "believe or leave" policy, and was intended through the threat of an unspecified reprisal to put a stop to such protected activity. It is an obvious violation of the Act. *Lutheran Heritage Village-Livonia*, supra. Accordingly, I conclude that the Respondent has violated Section 8(a)(1) of the Act, as alleged in complaint paragraph 5(c).

2. Quaglio's alleged surveillance of September 4, 2011

The General Counsel contends in complaint paragraph 5(d) that the Respondent, through Supervisor Kevin Quaglio, continued its campaign of harassing Bizzarro by engaging in surveillance of him in an effort to discover the specifics of his concerted activity with other security officers. According to the testimony of Bizzarro, on September 4, the day following the Respondent's announcement of its "believe or leave" campaign, he noticed Quaglio following him around the casino floor for approximately an hour while Bizzarro was performing his shift duties. Bizzarro testified that it was unusual for Quaglio to be that close to a security officer on the large casino floor, unless Quaglio was performing a "spotlight check" of that officer, which was not happening. It was Bizzarro's contention that the supervisors normally spend most of their time in the security office, rather than on the casino floor.

Quaglio denied that he was specifically following Bizzarro on the date in question, or that he ever surveilled or watched Bizzarro any differently than he did other security officers. Further, Quaglio testified that his supervisory position requires him to spend the majority of his work day on the casino floor and not in his office. He estimated that he spends about 60 percent of his work day on the casino floor and the remaining 40 percent in his office doing paperwork. According to Quaglio, while on the casino floor he walks around ensuring that everything is in order, and will normally observe the security officers in the performance of their jobs. This testimony was largely supported by other witnesses.

Security Supervisor Charles Willis testified that in the course of his work day, he spends approximately 70 percent of his time on the casino floor. Further, security officer Ty Evans testified on cross-examination that it is not unusual for him to see security supervisors on the casino floor, walking around, perhaps watching him, or perhaps watching other officers. In my view, this is simply logical. For the security officers and their supervisors, the "action" is on the casino floor. This is the place where the officers need to devote their attention, to prevent problems with "undesirables" from developing, and to quickly ameliorate any such situations that do develop. Supervisors are needed on the casino floor for the same reason, as well as to observe their subordinate employees to ensure that they are doing their jobs properly. The security supervisors, including Security Director Golebiewski, testified about attending to issues and problems that developed on the casino floor.

I credit the witnesses who testified that it is common for security supervisors to be present on the casino floor. I believe that Bizzarro has exaggerated and embellished the alleged incident with Supervisor Quaglio, where he allegedly followed Bizzarro for approximately 1 hour on the casino floor, assuming it happened at all. Quaglio denied any attempt to engage in surveillance of Bizzarro on the casino floor on September 4, or any other date. I accept that denial. The evidence to the contrary is limited to Bizzarro's testimony, which when combined with his claim that supervisors are seldom on the casino floor, is simply unrealistic. At this early stage in Bizzarro's protected conduct, prior to his involvement with the Union, I do not believe there is credible evidence that his conduct had become of particular interest to the Respondent. Bizzarro has a habit of magnifying his importance to the Respondent, which I do not believe was always the case, especially at this early stage in the saga.

The evidence offered by counsel for the General Counsel is insufficient to meet the General Counsel's burden of proof to establish that Quaglio engaged in unlawful surveillance of Bizzarro on the casino floor on about September 4. Accordingly, I recommend to the Board that complaint paragraph 5(d) be dismissed.

B. The Union Activity

Bizzarro testified that because of the various employment related complaints that certain security officers expressed following the announcement of the Respondent's "believe or leave" policy, he took it upon himself to contact various labor unions to determine whether one might be interested in representing the Respondent's security officers. He eventually decided on representation by the Union (SPFPA). Bizzarro obtained union authorization cards and began approaching officers in late September with information, fliers, and union authorization cards. He testified that he ultimately passed out over 100 authorization cards to security officers working at the Flamingo, O'Sheas, and Bill's.

The parties disagree as to the extent of openness with which Bizzarro initially conducted his union activity. The General Counsel and the Union contend that although Bizzarro openly shared his support for the Union with fellow security officers, he was initially not open to management about his union support. To the contrary, the Respondent contends that from the beginning of the process, Bizzarro was open about his union involvement and that as early as October 7, the Respondent learned that he was distributing union authorization cards.

I found Bizzarro's testimony regarding his method of hand-

ing out authorization cards rather confusing, inconsistent, and somewhat difficult to believe. According to his testimony, he did not pass out authorization cards in the presence of management. When he would approach a security officer, he typically would not give him or her an authorization card, but, rather, a business card. He testified that he had recently become a licensed real estate agent and had business cards printed. Apparently, he would talk to an officer about the process of union representation, give the officer union literature, and if the officer expressed interest in the Union, Bizzarro would tell the officer to call him on the telephone number printed on his business card. If subsequently called, he would make arrangements to get an authorization card to the officer. However, later in his testimony it seemed as if he was acknowledging that at times he would pass out authorization cards while at the Respondent's facility. Bizzarro did testify that he would pass out his business cards to supervisors, but would not engage them in conversations about the Union. He did not wear a union button or clothing identifying him as organizing on behalf of the Union, and the Union never provided the Respondent with a letter announcing the names of its organizers.

Security Director Eric Golebiewski testified that he first learned that there was a union organizing campaign going on at the facility on October 7. Supervisor Quaglio testified that security officer James Diserio brought him an authorization card in early October and informed him that Bizzarro "was really pushing this Union thing, and here are the cards that are being given out to all of the officers." As noted, the Respondent's position is that Bizzarro was very open with his union activity. In any event, it is undisputed that by no later than October 7 the Respondent was aware that Bizzarro had been distributing union authorization cards, and the Respondent had actually been given one of the cards by a security officer. There is no dispute that Bizzarro was the primary union organizer at the facility. He testified that during the time that the organizing campaign was being conducted, he posted approximately 10 union fliers on a bulletin board located in the Flamingo's security briefing room.

1. The preshift briefing of October 14, 2011

Prior to the start of a security shift, there is customarily a meeting held by management with the security officers who are about to begin their shift. Such preshift briefings are usually about 1530 minutes in length, although they may occasionally be longer. During such meetings, the security supervisors inform the officers about any issues or problems that it is anticipated they will encounter on the shift and any new policies about which they should be made aware. As the security director, Eric Golebiewski sometimes attends these briefings and may even participate in addressing the assembled officers, but typically such meetings are conducted by less senior supervisors. Often the supervisor conducting the meeting will ask the assembled officers whether they have any questions to ask, or problems, or issues that they wish to discuss. Short discussions may then ensue, ending with the officers being released to begin their shift.

According to the testimony of Security Supervisor Keith Berberich, a number of security officers had approached Berberich and complained to him that Golebiewski was too authoritative with them, and also complained to him about the service sweeps and spotlight procedure that the officers were required to perform. Berberich mentioned these complaints to Golebiewski and suggested to him that he meet with the officers. Golebiewski testified that he agreed to do so in an effort to determine why the officers felt that he "did not care about them." Thereafter, he attended the 9 p.m. preshift briefing on October 14.

Preliminarily, I will note that I do not credit Golebiewski's stated reason for holding this meeting. It is clear to me, based on the timing of the meeting, which occurred as the union organizing campaign was gaining momentum, that the real purpose for the meeting was so that Golebiewski could address that campaign. The length of the meeting and the topics discussed further establish that the union campaign was the true motivation for Golebiewski's presence.

The meeting lasted for 4 hours, which was highly unusual, and it resulted in a significantly diminished security presence on the casino floor, even delaying the start of the 1 a.m. shift, as those security officers were delayed in entering the briefing room. When he first entered the briefing room, Golebiewski asked the security supervisors to leave the room. He testified that he started the meeting by telling the officers that he had heard they were "upset" with him, that they felt he "did not care" about them, and he was there to talk about that.

The principal witnesses who testified about this October 14 preshift meeting were Bizzarro and Golebiewski. Their respective versions differed considerably. According to Bizzarro, Golebiewski removed a prounion flier from the bulletin board and went point by point through the flier trying to disprove the statements made in favor of the Union. He then asked if any of the security officers wanted to comment about the Union and when he got no response, he pointed to Bizzarro and asked if Bizzarro had any complaints and why Bizzarro would want a union. Bizzarro responded that management had been treating the security officers poorly, with no respect, and was not listening to the officers. According to Bizzarro, other officers then began to speak up, raising complaints about shortened breaks and spotlight checks.

Bizzarro testified that Golebiewski's response to the complaints being raised by the security officers was to indicate that management had been responsive to officers' complaints. Allegedly Golebiewski mentioned that he knew there had been a problem with Security Supervisor Rick Casali, who he had removed and sent to Harrah's for retraining, to be replaced by Supervisor Charles Willis, who he said "the officers would really like." Golebiewski went on to mention the ways in which he had helped officer Brian Meadows with an absenteeism problem, helped officer Thomas Willequer with a customer complaint, and helped officer Steve Fox with an attendance issue. According to Bizzarro, Golebiewski further commented that if there had been a union contract in effect at the Flamingo, that he would have been forced to strictly adhere to the contract, with no flexibility, and, so, would not have had the "leeway" to help Meadows, Willequer, or Fox with their respective problems.

As noted, Golebiewski's version of this meeting differs sig-

nificantly from that of Bizzarro. Although it seems to me that the differences are not so much as to specifically what was said, but, rather, what was emphasized. Golebiewski testified that he began the meeting by saying that it was informal and everybody was "free to talk" about the issues that they had with him. He claims that Bizzarro immediately spoke up and said, "You don't care about us." Golebiewski denied that was so, and he proceeded to give examples of how he had helped Bizzarro. He mentioned an incident on the casino floor when a prostitute had spit into Bizzarro's face, and a further issue where Bizzarro had refused to wear a name badge containing his full last name. Golebiewski explained that Bizzarro was concerned that with an officer's full name exposed on the name badge, an "undesirable," such as a prostitute, would potentially be able to trace an officer back to his or her home. Golebiewski informed the officers that after he learned of this concern, he had changed the nametag policy and was no longer requiring an officer's entire last name be listed on the tag. According to Golebiewski, Bizzarro mentioned other problems that he had been having with management, with Golebiewski responding in each case.

Golebiewski testified specifically that he did not ask employees about their views of the Union, nor did he ask them about their attitudes towards the Union. He denied that he did or said anything that could suggest to employees that their union activities were under observation. Further, he denied that he had indicated that the rules would be more strictly enforced if the facility were organized.

Security Officer Thomas Willequer attended the October 14 meeting, and he testified there were between eight and ten officers present. He supported Bizzarro's testimony that Golebiewski began the meeting by asking the assembled officers collectively why they wanted to join the Union. According to Willequer, Golebiewski then asked each officer the same question individually, which resulted in only a few officers responding. Willequer claims that Golebiewski stated that if the Union were to successfully organize the facility, there would be "no way that he could guarantee that we would be able to keep our jobs."

Officer Brian Meadows was at the meeting and testified that Golebiewski started it off by going around the room "to see where we all stood as far as the Union and our concerns . . . at the Flamingo and our concerns with our employment." Golebiewski wanted the individual officers to "share" their feelings with the collective group. According to Meadows, Golebiewski took credit for saving the jobs of several officers and said that if the Union were present in the Flamingo, he would not have been able to do so. Golebiewski also took the opportunity to announce that Supervisor Ricky Casali was going to be transferred and replaced by Charles Willis. Meadows testified that there had been many officer complaints about Casali and some of those were discussed at the meeting. He cannot recall whether Golebiewski gave a specific reason for Casali's transfer, just that it was going to occur.

The preshift meeting on October 14 was 4 hours long, many matters were discussed, and, unfortunately, the witnesses each recall matters somewhat differently. However, some aspects of the meeting were uniformly apparent from the testimony of the witnesses.

It is alleged in paragraph 5(e)(1) of the complaint that Golebiewski created an impression among the security officers at the meeting that their union activities were under surveillance by the Respondent. I do not believe that this is accurate. It should have been clear to all the security officers by the October 14 meeting that management was already aware of the union organizational campaign. As of October 7 management had a union authorization card, given to it by a security officer, and had almost immediately posted it on a bulletin board with a responsive notice cautioning employees regarding the consequences of signing such a card. It is clear to me, and I assume it was to the gathered security officers, that Golebiewski was present at the October 14 meeting to further respond to the union campaign. However, Golebiewski said nothing that would lead the officers to conclude that the Respondent was spying on them or watching them in an attempt to determine what union activity, if any, in which they were engaged. It should have been obvious to the security officers that what knowledge the Respondent had of the union campaign as of October 14 was the result of the rather transparent efforts of Bizzarro to solicit authorization cards.

Accordingly, I conclude that counsel for the General Counsel has offered insufficient evidence that as of the preshift briefing on October 14 that Golebiewski created an impression among its employees that their union activities were under surveillance by the Respondent. Therefore, I shall recommend to the Board that complaint paragraph 5(e)(1) be dismissed.

Paragraph 5(e)(2) of the complaint alleges that at the meeting on October 14, Golebiewski interrogated the employees about their union membership, activities, and sympathies. I agree. Based on the statements that Golebiewski made as he began the meeting, it should have been obvious that he was present to respond to the union campaign. I credit the testimony of Bizzarro, Willequer, and Meadows that Golebiewski no sooner requested that the supervisors leave the room then he asked the security officers both collectively and individually why they wanted the Union. He was responding to the union flier that he had just removed from the bulletin board and to the organizing campaign, which the officers and their supervisors knew was occurring.

Golebiewski's denial that he asked the officers about their union views or sympathies is simply not credible. Further, I do not credit a self serving email message purporting to summarize the meeting of October 14, which Golebiewski prepared the following day and sent to his superior. (GC Exh. 9.) He attempts to minimize his references to the union or his concerns about the organizing campaign, and, rather, tries to establish that his principal concern was what complaints the officers had with him personally. Frankly, this defies credulity. The October 14 meeting was not just another preshift briefing, far from it. After entering the room, Golebiewski took the highly unusual step of asking the line supervisors to leave the room. He then "held court" for 4 hours, apparently being willing to sacrifice having an appropriate level of security on the casino floor. I seriously doubt that Golebiewski would have been willing to do so simply so that he could find out what complaints the officers had with him personally. Rather, I believe that he would have gone to such extremes only in an effort to confront the

union campaign, which was at the time gathering momentum.

In determining whether a supervisor's questions to an employee about his union activities were coercive under the Act, the Board looks to the "totality of the circumstances." *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *HERE Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). In *Westwood Health Care Center*, 330 NLRB 935 (2000), the Board listed a number of factors considered in determining whether alleged interrogations under *Rossmore House* were coercive. These are referred to as "*Bourne* factors," so named because they were first set forth in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964). These factors include the background of the parties' relationship, the nature of the information sought, the identity of the questioner, the place and method of interrogation, and the truthfulness of the reply.

In the matter at hand, the questioner was Eric Golebiewski, the Respondent's security director and its highest ranking security supervisor. He asked the group of security officers how they felt about the Union, or words to that effect. He initially asked them collectively, but then when he got few responses, he repeated his inquiry directly asking for individual responses. Undoubtedly the officers were concerned about giving truthful, candid responses, as many of them remained silent. From his comments regarding the Union, the officers understood where Golebiewski stood on the issue. Naturally, some of the officers would be concerned about upsetting him with a prounion response. Such questions from Golebiewski would reasonably tend to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights.

Under such circumstances, I conclude that by Golebiewski's statements at the prehearing briefing on October 14, 2011, the Respondent has unlawfully interrogated its employees regarding their union membership, activities, and sympathies. Therefore, it has violated Section 8(a)(1) of the Act, as alleged in complaint paragraph 5(e)(2).

Other aspects of Golebiewski's conduct during the meeting of October 14 are also alleged to be unlawful, as the General Counsel contends in complaint paragraph 5(e)(3) that he unlawfully solicited employees' complaints and grievances, and promised them increased benefits and improved terms and conditions of employment to dissuade those employees from supporting the Union. While his precise words are somewhat unclear, it is obvious from the substance and context of the conversation that during the meeting Golebiewski discussed with the assembled security officers concerns that they had with the Respondent's management.

The Board has long held that soliciting employee complaints and grievances during a union organizing campaign contains therein an implied promise to remedy such complaints. See, e.g., *Associated Mills, Inc.,* 190 NLRB 113 (1971); *Swift Produce, Inc.,* 203 NLRB 360 (1973). Further, the fact that an employer's representative does not make a commitment to specifically take corrective action does not diminish the anticipation of a remedy for employee complaints. *Maple Grove Health Care Center*, 330 NLRB 775 (2000), citing *Capitol EMI Music*, 311 NLRB 997 (1993).

In order for the solicitation of grievances to be unlawful, it is not necessary for a union to have filed a representational petition, but merely for there to be a union organizing campaign in progress. See, e.g., *Curwood Inc.,* 339 NLRB 1137, 1147–1148 (2003), enfd. in pertinent part 397 F.3d 548, 553–554 (7th Cir. 2005) (holding that a prepetition announcement and promise to improve pension benefits violated the Act where the employer was reacting to knowledge of union activity among its employees). In the matter at hand, as of the meeting of October 14, the Respondent was aware that the Union was attempting to organize the security officers. As I have already concluded above, Golebiewski's reason for conducting this four hour meeting was to address the security officers' interest in union representation.

It is important to note that the meeting of October 14 was not the typical 15-minute preshift briefing where a line supervisor would alert the officers as to any developments on the casino floor, and new policies and procedures, and would routinely close the meeting by asking whether the officers had any issues or complaints that they wanted to raise. The meeting in question was very unusual, both as to its length, and because it was conducted by the security director himself. Whether Golebiewski began the meeting by asking what problems the officers had with him, or, as others have testified, by asking why the officers wanted a union, the meeting evolved into a session where complaints were raised, many by Bizzarro, with Golebiewski responding by indicating what he had done to benefit the officers. Among other matters, Golebiewski discussed having saved the jobs of officers Meadows, Willequer, and Fox, which he indicated would not have been possible had the Union organized the facility. Officers complained about numerous other matters including, shortened breaks, spotlight checks, full names on name tags, and their difficulties with Supervisor Rick Casali.

I am in agreement with counsel for the General Counsel that during the October 14 meeting, in the course of giving an antiunion speech, which included the unlawful interrogation of employees regarding their union sympathies, Golebiewski also unlawfully solicited employee complaints and grievances. Through those solicitations, Golebiewski was implicitly promising the officers increased benefits and improved terms and conditions of employment for the purpose of dissuading them from supporting the Union. Accordingly, the Respondent has violated Section 8(a)(1) of the Act, as alleged in complaint paragraph 5(e)(3).

Further, in my view, Golebiewski's statement to the officers that Supervisor Casali, with whom they had difficulties and had raised numerous complaint, was being transferred to a different facility, and was to be replaced by Supervisor Charles Willis, was an unlawful promise of improved terms and conditions of employment in order to dissuade them from supporting the Union, as alleged in complaint paragraph 5(e)(4). Golebiewski's conduct constituted a transparent promise of benefit, as he went so far as to tell the assembled officers that they would "really like" Willis.

I reject the Respondent's defense that the decision to transfer Casali had been made some time before the October 14 meeting, and was taken as a routine transfer to another HIFOP property where Casali could receive cross-training. Even assuming such to be true, the real issue is what the security officers were

told and when they were so told. I have credited the officers who testified that they first heard on October 14 that Casali was to be transferred when Golebiewski mentioned it in response to complaints raised about Casali, and while he told them that their new supervisor was to be Willis, somebody that they would "really like." It was certainly reasonable for the officers to conclude that Casali was being replaced as a benefit to them in order to dissuade them from supporting the Union. Such conduct constitutes a violation of Section 8(a)(1) of the Act, as alleged in complaint paragraph 5(e)(4).[10]

Before leaving the matter of the October 14 meeting, it is necessary to address the claim in complaint paragraph 5(e)(5), which alleges that Golebiewski threatened the employees with more strictly enforced work rules and job loss if they selected the Union as their collective-bargaining representative. As noted above, I found that at the preshift meeting Golebiewski mentioned how he had allegedly saved the jobs of officers Meadows, Willequer, and Fox by his considerate treatment of their alleged infractions of the Respondent's rules and policies. Further, Golebiewski indicated that if there had been a union contract in effect at the Flamingo that he would have had to strictly adhere to that contract with no flexibility, and he would not have had the "leeway" to assist the officers. Obviously, this comment was meant to suggest to the officers that if the Union were successful in organizing the facility and subsequently signing a collective-bargaining agreement with the Respondent, that work rules would be strictly enforced under the terms of that contract and employees who ran afoul of the rules could be terminated. Golebiewski was saying that under such circumstances, he would not have the liberty to help them. This was certainly a reasonable interpretation for the assembled officers to reach upon hearing Golebiewski's comments.

Once again, it should be noted that Golebiewski's comments at the October 14 preshift briefing were made shortly after the Respondent learned of the union campaign and just as that campaign was gathering momentum. It seems to me that those comments were clearly designed to restrain, coerce, and interfere with the security officers' right to engage in Section 7 activity. Cf. *Carter's, Inc*., 339 NLRB 1089, 1089 fn. 2, 1093 (2003); Cf. *Mediplex of Wethersfield*, 320 NLRB 510, 518 (1995). Those comments constituted threats to more strictly enforce work rules and with a corresponding potential of job loss if the security officers selected the Union as their collective bargaining representative. Accordingly, I find that they constituted a violation of Section 8(a)(1) of the Act, as alleged in complaint paragraph 5(e)(5).

[10] It should be noted that I do not find, as also alleged in complaint par. 5(e)(4), that on October 14, Golebiewski informed the officers that they would no longer be required to perform service sweeps. The record evidence is to the contrary, as employees continued to be required to perform service sweeps after October 14. Service sweeps are interactions between security officers and customers, which are critically important to the Respondent in its efforts to improve its customer service scores. The only change in the Respondent's past practice occurred after the October 14 meeting, and was limited to the officers no longer having to call in to dispatch and report their service sweeps.

2. The "Bizarre" flier

In an effort to counter prounion fliers, the Respondent produced a series of antiunion fliers, which were posted on the Respondent's bulletin boards and distributed directly to security officers. One of those fliers was distributed to officers at a preshift meeting held several days after the 4-hour meeting, which means that the flier would have been distributed on approximately October 16, 2011. The General Counsel alleges in complaint paragraph 5(f)(1) that by that printed communication the Respondent created the impression among its employees that their union activities were under surveillance. I agree.

As I have already concluded, while Francis Bizzarro was the primary union organizer and distributor of authorization cards, such was an "open secret." Bizzarro did not distribute authorization cards in the presence of supervisors. However, his method of distributing cards, as discussed in detail earlier in this decision, was such that it quickly became well known among both employees and management that he was doing so. The Respondent's supervisory witnesses acknowledge knowing as much by no later than October 7, when informed by a security officer.

The antiunion flier distributed on about October 16 was remarkable for only one reason. In the middle of this flier, which portrays the Union in a negative way, in the middle of a sentence, the word "BIZARRE" appears in capital letters, where the other words in the sentence are in normal lower case. (GC Exh. 6.) The word certainly stands out from the rest of the sentence, which in whole reads as follows: "We realize it's a pretty BIZARRE situation, but it looks like a small group is trying to convince all of you that you need to sign up (without asking questions) for a union that has absolutely no track record for achieving 'better' or 'more' for its dues-paying members." When asked why this one word in the sentence appeared in capital letters, the Respondent's security director, Eric Golebiewski, indicated that he did not know, as he did not prepare the flier and was not sure who did. Counsel for the Respondent states in his posthearing brief that the use of the word BIZARRE in capital letters was appropriate in its context, was not intended to draw attention to Francis Bizzarro, and was nothing more than an innocent coincidence. This contention I find preposterous.

It defies logic to believe that this "play on words" was simply a coincidence. Rather, it seems very obvious that the writer of the flier intended for the readers to understand the connection that was being made between the word "BIZARRE" in capital letters and the primary union organizer, Francis Bizzarro. It is highly doubtful that any security officer who read the flier would not have known that the reference was to Francis Bizzarro. However, the legal question raised by the complaint is whether identifying Bizzarro in this way created an impression among the Respondent's employees that their union activities were under surveillance. I believe that it did.

While it may have been generally known by the security officers that Bizzarro was the primary union organizer, seeing his name used and convoluted in this way would have served to alert those employees that the Respondent was aware of Bizzarro's union activities and was targeting him and publicly ridiculing him for those activities. It would serve as a warning

that having the ability to engage in surveillance of Bizzarro's union activity, the Respondent was certainly capable of doing the same to other union supporters.

The test for whether an employer creates an unlawful impression of surveillance is whether, under the circumstances, an employee could reasonably conclude that his union activities are being monitored. *Mountain Steel, Inc.,* 326 NLRB 787 (1998), enfd. 8 Fed. Appx. 180 (4th Cir. 2001). It seems to me that in the case at hand, that was the logical, and certainly reasonable, conclusion that security officers would reach upon seeing the play on words using Bizzarro's name in the flier. The Board has held that under the Act "[e]mployees should not have to fear that 'members of management are peering over their shoulders, taking note of who is involved in union activities, and in what particular ways.'" *Conley Trucking*, 349 NLRB 308 (2007), quoting *Fred'k Wallace & Sons, Inc*., 331 NLRB 914 (2000).

I conclude that the play on words using Bizzarro's name in the flier created an impression among the security officers that their union activities might be under surveillance by the Respondent. This certainly had the potential to interfere with their exercise of Section 7 rights. Therefore, I conclude that by this conduct the Respondent has violated Section 8(a)(1) of the Act, as alleged in paragraph 5(f)(1) of the complaint.

The General Counsel alleges in complaint paragraph 5(f)(2) that the Respondent concomitantly threatened its employees with unspecified reprisals for engaging in union activity when it distributed the flier containing the play on words using Bizzarro's name. Certainly, holding an employee up to ridicule, as was done to Bizzarro by the reference to his name in the flier, was a personally demeaning action taken by the Respondent against a union supporter because of his union activities. While perhaps this did not constitute a typical threat, it would certainly have the ability to interfere with, coerce or restrain employees in the exercise of their Section 7 rights. An employee would reasonably think twice before engaging in union activity when the result might be having the Respondent single out and hold that employee up to public ridicule. Thus, such an action by an employer does for all practical purposes result in an infringement of employee rights under the Act. Accordingly, I conclude that counsel for the General Counsel has met his burden and established a violation of Section 8(a)(1) of the Act, as alleged in complaint paragraph 5(f)(2).

3. Conversation between Golebiewski and Rudy

It is alleged in complaint paragraph 5(g)(1) that about December 2, 2011, Golebiewski threatened an employee with discipline if the security officers selected the Union as their collective-bargaining representative. The employee referenced is security officer Christopher Rudy, and while both Rudy and Golebiewski recalled the conversation, their versions of the incident are somewhat different. This conversation occurred either on the casino floor or in the lobby of the hotel, but the precise location is not significant.

According to Rudy, in late November, he was in the hotel lobby talking to guests and "a cigarette girl." Golebiewski came up to him, put his hand on Rudy's shoulder and said, "If this was a union area, I would have to write you up." Rudy responded, "I'm glad I'm not getting written up." Rudy testified that there is no rule against talking with other employees, only that the security officers are not to "pool together."

Golebiewski placed the incident in December. He testified that while walking through the lobby of the hotel, he observed Rudy "talking to his girlfriend, the cigarette girl." According to Golebiewski, he knew that she was Rudy's girlfriend as he had previously observed them kissing and embracing. As he approached Rudy, Golebiewski noticed him talking with the cigarette girl and "touching her hair." He also noticed "a particular pair of customers that were standing, waiting for [Rudy] to get done with his conversation with the cigarette girl." As Rudy had not seen him approach, Golebiewski tapped him on the shoulder and said very quietly, "If there was a union contract it would have language in it about guest service." According to Golebiewski, he then "nudged" his eyes towards the customers, which was when Rudy first noticed customers waiting for him. Rudy is said to have responded, "Good thing there's no contract."

The two versions of the conversation are substantively rather similar. Rudy was on his security officer rounds, but was talking with the cigarette girl. Golebiewski observed this and was concerned that Rudy was distracted from doing his job because Rudy was talking with the cigarette girl, and/or because he was not servicing customers waiting to talk with him. Golebiewski then referenced the union contract and the language it would contain covering such a situation.

If Golebiewski had merely told Rudy to get back to work, or words to that effect, there would be no issue here. However, instead he referred to a potential union contract and what impact contractual language would have on such a situation. Whether Rudy's version is more accurate and Golebiewski mentioned having to "write him up" in such a situation, or whether Golebiewski said something more generic, such as mentioning "guest services language," there was the implicit notice that under a union contract Golebiewski would have been required to take some disciplinary action against Rudy. In fact, that was precisely the way Rudy understood the comment, as he responded that he was glad that was not going to happen, or words to that effect. Rudy's response was certainly reasonable under the circumstances.

There is no mystery here. What Golebiewski was saying to Rudy was that he would no longer be able to be lenient with him regarding discipline if the Union were successful in organizing the facility and getting a contract. This was a threat of a changed condition of employment in which past leniency would be eliminated by the existence of a union contract, with Golebiewski making no reference to changes based on the collective-bargaining process.[11] Such a statement by Golebiewski had the effect of interfering with, restraining, and coercing employees in the exercise of their Section 7 rights. Cf. *Carter's Inc*., supra; Cf. *Mediplex of Wethersfield*, supra. It constitutes a violation of Section 8(a)(1) of the Act, as alleged in complaint

[11] Golebiewski testified about a conversation that he had with Rudy some 2 weeks earlier where they had discussed the collective-bargaining process. However, I see no connection between these two conversations that were so far apart.

paragraph 5(g)(1).

Concomitantly, the General Counsel alleged in complaint paragraph 5(g)(2) that the statements Golebiewski made to Rudy also constituted the promulgation and enforcement of an overlybroad and discriminatory work rule prohibiting the Respondent's employees from talking to coworkers because of their union activities. However, I do not reach such a conclusion.

The most that can be said about Golebiewski trying to limit the conservation that Rudy was having with the cigarette girl was that while on duty Rudy should not be conversing with coworkers, be that person a girlfriend or not, while customers were waiting to speak with him. There was absolutely no evidence that this was an attempt to promulgate a rule of any kind, and, even more to the point, no evidence that by his statements Golebiewski was trying to limit the union or protected concerted activity of the Respondent's employees. Further, it would have been unreasonable for either Rudy or the cigarette girl to have reached such a conclusion.

The Respondent had the right to expect that while on his work shift Rudy would be performing the security duties of walking his rounds and interacting with customers. He was not told that he could not talk with the cigarette girl, but merely reminded that he was not performing his duties while standing in the facility talking as customers were waiting to be serviced. No rule was promulgated or enforced and no restrictions were being placed on union or protected concerted activity. Accordingly, I shall recommend that the Board dismiss complaint paragraph 5(g)(2).

4. Confrontation between Bizzarro and Baker

As I mentioned earlier in this decision, Francis Bizzarro and Paul Baker, the HIFOB and Respondent's vice president of operations and assistant general manager, had been friends before Bizzarro came to work for the Respondent. Baker had in fact given Bizzarro a reference for the security officer position, and it is highly likely that a reference from such a high ranking official of the Respondent would have been very helpful to Bizzarro is securing a position as a security officer. The men's wives had been friends and Yoga devotees before the husbands became friendly. While the degree of friendship between Bizzarro and Baker is somewhat unclear, there is no doubt that they were socially acquainted, the two couples having spent time together before Bizzarro's employment.

On a day in mid-January 2012, Bizzarro and Baker had a series of interactions, more accurately described as confrontations, at the Respondent's facility. Not surprisingly, the two men differ as to precisely what was said during these incidents. Baker testified that while leaving work on that day, he had occasion to see Bizzarro arriving at work. According to Bizzarro, Baker was waiting for him as Bizzarro passed through an underground hallway from the parking garage on his way to work.

The men exchanged greetings, and Bizzarro claims that in response to the question as to how he was doing, Baker responded, "not so well." Bizzarro testified that Baker told him that he was upset and felt "betrayed" as Bizzarro had tried to bring the Union into the facility. According to Bizzarro, Baker was screaming at him, and so he walked away and went to the timeclock to clock in. Baker followed him to the time clock and continued to yell at Bizzarro, again saying that Bizzarro had "betrayed" him, and asked why Bizzarro had failed to follow the "chain of command." Baker is alleged to have said that his job had been "placed in jeopardy" by what Bizzarro had done. Further, according to Bizzarro, Baker stated that all Bizzarro's issues had been taken care of by management, questioned why Bizzarro had not gone to human resources with his complaints, and asked how Bizzarro could get the Union involved with the security officers.

Bizzarro testified that he told Baker that it wasn't anything personal against him, just that the security officers wanted representation. He asked why Baker was so upset with him, as this was just what the security officers wanted. Further, he told Baker that the security officers had enough of management's treatment, and that they had been treated poorly and with no respect. According to Bizzarro, Baker seemed very frustrated, was red in the face, very angry, and continued to yell at him, and was in fact screaming. Bizzarro contends that again he tried to walk away from Baker, saying that he had to get his uniform and go to work. Bizzarro described the incident as "quite the scene."

However, Baker described the incident somewhat differently. According to Baker, he encountered Bizzarro at about 9 p.m. as Baker was leaving work for the day. The two men exchanged hellos, after which Baker said, "I just want to tell you that, you know, I'm just very disappointed that all this has occurred and you just didn't come to me if there was a problem, you know, in the organization." Baker claims that Bizzarro then simply walked away. However, after a short while Baker proceeded on this way towards the parking garage, at which point, near the timeclock, he again encountered Bizzarro.

Baker testified that he asked Bizzarro why he had walked away while they were having a conversation. Baker then said, "I just want to reiterate that I feel personally pretty—just upset and disappointed that you didn't come to me. You know, we have a relationship, you know. I helped facilitate you getting a job with a referral, especially when you were having the troubling time that you were having, basically an emotional breakdown." Bizzarro responded by denying that he was having an emotional breakdown, to which Baker said that Bizzarro's wife had given that information to Baker's wife.

According to Baker, he then said, "You know Francis, I just feel like there's better Unions out there if you look at the research." Bizzarro responded by saying that Baker did not know anything, as he just sits up in his office all day. Baker replied, "I'm out on the floor more than you know, more than you are." According to Baker, Bizzarro then said, "This customer service stuff is going to get people fired." Baker testified that he then responded as follows: "This customer service stuff hasn't gotten anybody fired. In fact, none of this, even this union activity, nobody will get fired for wanting to be involved in the organization effort here. In fact, there will be no retaliation associated with any union organization or activity here." The conversation ended when Baker repeated that he "felt really disappointed" that Bizzarro had not "come to [him] first."

I did not find Baker to be a credible witness. When testify-

ing he seemed rather nervous, more so than would be expected for a person with his lofty position with the Respondent. Although he testified that considering their past friendship, he was disappointed that Bizzarro had not gone to him first with his complaints, I got the distinct impression that he was trying not to show the depth of his emotional feelings. He appeared to have his emotions just barely controlled, and I believe that he really felt deeply betrayed by Bizzarro's union activity. Further, I found much of his testimony self serving and unrealistic, especially his contention that he specifically told Bizzarro that "nobody will get fired for wanting to be involved in the organization effort here."

As I noted earlier in this decision, while I found Bizzarro generally credible, he did have a tendency to exaggerate and embellish so as to put himself in the best possible light. In any event, in comparing the two versions of the conversation in question, I believe that Bizzarro's version was inherently more credible than that told by Baker. Bizzarro's story had the ring of authenticity to it, while Baker's story did not. Accordingly, I will credit the version of the conversation told by Bizzarro, including his claim that Baker was red in the face, screaming at him, and said that Bizzarro's actions had placed his [Baker's] job "in jeopardy," and that Bizzarro had "betrayed" him.

Complaint paragraph 5(h)(1) alleges that the Respondent, by Paul Baker, threatened its employees by informing them that they were disloyal because employees supported the Union and engaged in union activities. Having found Bizzarro's version of the conversation credible, I conclude that during that conversation Baker said that Bizzarro had "betrayed" him and placed Baker's job "in jeopardy" by his union activities. It was certainly reasonable for Bizzarro to conclude that in Baker's eyes he was a disloyal employee for having engaged in union activities. Further, an employee would reasonably assume that disloyal employees get fired. As the Board has long held, "The test of whether a statement is unlawful is whether the words could reasonably be construed as coercive, whether or not that is the only reasonable construction." *Double D Construction Group*, 339 NLRB 303, 303–304 (2003).

An employer has been found to violate the Act with comments about "loyalty." *E.L.C. Electric, Inc.,* 344 NLRB 1200, 1200 fn. 3 (2005) (affirming the administrative law judge's finding of a violation for telling an employee it would try to keep its "loyal employees"); *Hialeah Hospital*, 343 NLRB 391 (2004) (finding the employer's representative violated the Act "by telling the employees that he felt 'betrayed' and 'stabbed in the back' because they had contacted the Union. Those statements conveyed to the employees the message that engaging in union activity, a protected statutory right, was tantamount to employee disloyalty, and implicitly threatened them with unspecified reprisals.").

Accordingly, I conclude that by his statements to Bizzarro in mid-January of 2012, Baker had threatened him with termination because of his union sympathies and activities. By such conduct, the Respondent has violated Section 8(a)(1) of the Act, as alleged in complaint paragraph 5(h)(1).

It is further alleged in complaint paragraph 5(h)(2) that during that same conversation, Baker threatened Bizzarro with loss of benefits as the Respondent would no longer resolve employee complaints because the employees had supported the Union and engaged in union activities. However, even after crediting Bizzarro's version of the conversation with Baker, I do not believe that it would have been reasonable for Bizzarro to have reached such a conclusion.

I conclude that Baker told Bizzarro that all his problems had been taken care of through management, and, so, he should have followed the "chain of command," rather than having gone to the Union. Still, counsel for the General Counsel's contention that Bizzarro would have reasonably understood this to mean that because the employees had sought representation from the Union that the Respondent would no longer resolve their complaints is a leap of logic too great to reasonably make. I do not believe that Bizzarro or other security officers would have reasonably reached such a conclusion. Therefore, I shall recommend to the Board that complaint paragraph 5(h)(2) be dismissed.

The General Counsel alleges in complaint paragraph 5(h)(3) that during the conversation between Baker and Bizzarro, Baker promulgated and enforced an overlybroad and discriminatory rule that the security officers had to follow the chain of command to resolve their complaints. As noted, I have concluded that Baker criticized Bizzarro for failing to follow the chain of command and take his complaints to the human resource department, but instead to have sought union representation. I believe that for all practical purposes Baker was promulgating a rule requiring employees to bring complaints through the human resource department and through the chain of command. Further, he was implicitly threatening Bizzarro with disciplinary action for failing to do so, but instead for having contacted the Union.

The promulgation of such a rule would reasonably be construed by employees as prohibiting Section 7 activity. It would, therefore, chill those employees' right to organize on behalf of the Union, go to the Union with their complaints, or engage in other protected concerted activity. *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646–647 (2004); See *Northeastern Land Services,* 352 NLRB 744 (2009) (applying the Board's standard in *Lutheran Heritage-Village,* supra at 647); *Lafayette Park Hotel*, supra. Accordingly, I conclude that the statement attributed to Baker constituted a violation of Section 8(a)(1) of the Act, as alleged in complaint paragraph 5(h)(3).

The General Counsel alleges in complaint paragraph 5(h)(4) that during the conversation in mid-January, Baker threatened employees with discharge because they supported the Union and engaged in union activities. In his posthearing brief, counsel for the General Counsel does not distinguish this allegation from that contained in complaint paragraph 5(h)(1), which mentions Baker threatening employees with discipline by informing them that they were disloyal because they supported the Union and engaged in union activity. In examining the statements made by Baker in his conversation with Bizzarro, I am not aware of any language threatening Bizzarro beyond that language that I have already considered and found unlawful. According, I believe that this allegation is simply a repetition of that allegation earlier considered. Therefore, I shall recommend to the Board that complaint paragraph 5(h)(4) be dismissed.

5. Willis creates the impression of surveillance

Complaint paragraph 5(i) alleges that on January 15, 2012, the Respondent through Supervisor Charles Willis, by describing employees who supported the Union and engaged in union activities, created an impression among its employees that their union activities were under surveillance. In his posthearing brief, counsel for the General Counsel sets forth a number of incidents that he contends establish that the actions of various supervisors, including Willis, were intended to leave the security officers with the impression that the Respondent was aware of Bizzarro's union activity.

Former security officer Brian Meadows testified that in mid-December 2011, at a preshift briefing an officer asked supervisor Keith Berberich a question, which he answered by saying, "I don't know the answer to that question, you'll have to ask Francis that question." According to Meadows, Bizzarro got very offended and asked Berberich, "Why are you pointing at me?" Allegedly, Berberich turned bright red, put his hands up and said, "Well, I thought you were the mister know it all guy about the Union."

Security officer Ty Evans testified that in mid-January 2012, he was with Supervisor Charles Willis outside the briefing room when Willis began to talk about the matters that he was going to discuss once the briefing started. According to Evans, Willis said that he was "tired of being told what he could and couldn't say about the union issue." Allegedly, Willis went on to say that "the instigator of the union situation had been given a favor and given the job that he had and, as a result of family issues, he was having problems at home and he was given a favor with his job." It is counsel for the General Counsel's contention that this was a reference to Bizzarro by Willis, who knew from Barker that Barker had given Bizzarro a job referral because the men were friends and because Bizzarro had been having problems at home.

Willis testified and while I found his testimony very confusing and difficult to follow, he seemed to deny that he had told Evans or any security officer that Bizzarro had gotten his job through his friendship with Baker. Willis apparently only found out that Bizzarro and Baker had been friends when several days earlier he had overheard part of the conversation between Bizzarro and Baker on January 13. While Wills seems to recall a conversation with Evans prior to a briefing, he recalls the Union coming up in the conversation only in regards to the contract that the Union had to represent security guards at the Aquarius Casino and Hotel in Laughlin, Nevada. I did not believe Willis' denial, and I found his testimony concerning this incident very disjointed, self serving, and implausible. On the other hand, I found Evans' testimony coherent, plausible, and, overall, credible.

Further, security officer Christopher Rudy testified that in late January 2012, at a preshift briefing, Willis asked, "Do you really want a guy who was juiced in[12] by upper management to represent you in this cause," referring to Bizzarro and the Union. As noted, Willis denied ever making such a statement, but, for the reasons given, I do not accept his denial, and, rather, credit Rudy.

Based on the credible testimony of Evans and Rudy, I am of the view that in January 2012, Willis made several comments to security officers regarding an unnamed officer that Willis described as the "instigator of the union situation" who was given his job as a "favor" because he had family problems, and also as somebody trying to represent the employees who got his job because he was "juiced in." It would have been obvious to the security officers who heard the remarks that Willis was referencing Bizzarro.[13] While I have found that it was at least an "open secret" that Bizzarro was the chief union organizer, Bizzarro had not directly represented himself to management as such. Willis' remarks were designed to single Bizzarro out as the union organizer and to disparage him. This conduct would likely leave the security officers with the impression that Bizzarro's union activities were under surveillance by management.

As was mentioned earlier, the test for whether an employer creates an unlawful impression of surveillance is whether, under the circumstances, an employee could reasonably conclude that his union activities are being monitored. *Mountaineer Steel, Inc.,* supra. By his comments, Willis was letting the security officers know that management was aware of Bizzarro's union activities, and by those derogatory references, Willis was also telling the officers that management was none too happy with Bizzarro's activities. The security officers should not have to fear that "members of management are peering over their shoulders, taking note of who is involved in union activities and in what particular ways." *Conley Trucking*, supra, quoting *Fred'k Wallace & Son, Inc*., supra.

Willis' comments would reasonably chill the Section 7 activities of the security officers by causing them to be apprehensive that if they engaged in union activities the Respondent would be monitoring such activities as it appeared it had been doing with Bizzarro's activities. Accordingly, I conclude that Willis' comments constituted a violation of Section 8(a)(1) of the Act, as alleged in complaint paragraph 5(i).

6. Request that security officers take voluntary time off

The General Counsel alleges in complaint paragraph 5(j) that about January 19, 2012, the Respondent, by Keith Berberich, threatened its employees with layoffs because they engaged in union activities. It is undisputed that the Respondent had a past practice of requiring security officers who desired to take time off from work to make such a request of management two weeks in advance. A number of security officers testified that in December 2011 or January 2012, they were told by supervisors, including Berberich and Willis, that the Respondent was trying to cut costs, and it would be appreciated if officers who wanted to take unpaid time off from work would do so, and that in that event they could take the time off without having to give 2 weeks advance notice. The officers were further told that such voluntary time off could avert possible layoffs, and that officers who requested time off would be considered "team

[12] I will take administrative notice that the term "juiced" is a colloquial expression meaning having or using influence to get some benefit.

[13] It appears that Keith Berberich's remark in December 2011 also referenced Bizzarro. However, this incident is not alleged in the complaint to constitute an unlawful impression of surveillance. Therefore, I will not deal with it further.

players." While the Respondent does not deny that its supervisors encouraged the security officers to take voluntary time off, it argues that this was something that was being encouraged throughout the Respondent's various departments and was totally unrelated to the organizing campaign in the security department.

The available evidence strongly suggests that an effort to get employees to take voluntary time off was instituted companywide and was not restricted to just the Respondent's security department. Further, there is no credible, probative evidence to establish that the effort was in any way related to the attempt to organize the security officers. Security officer Willequer testified that in the December/January time frame, Berberich asked at a preshift briefing whether anybody wanted to take time off without pay. Berberich indicated that "Caesar's Entertainment had overspent their profit margin and was trying to make some of that up by asking the officers to take time off without pay." According to Willequer, Berberich added that "the rest of the departments would be asking their people in about two or three months later on down the road to do that." Willequer clearly testified that Berberich indicated the encouragement to take time off was related to "budgetary matters" at Caesar's Entertainment, and that no connection was made to the union organizational campaign.

Berberich's unrebutted testimony was that in the 19 years that he had worked in the Flamingo there had been slow periods when officers had been asked if they would like to take extra time off, but that they were not forced to do so. During such slow seasons, all departments are impacted, with Berberich mentioning the food and beverage and housekeeping departments. When specifically asked during direct examination by counsel for the Respondent whether the solicitation to the security officers of unpaid leave was in any way connected to their union activities, Berberich credibly testified, "It happens every year, no connection sir."

There is simply no credible evidence connecting a request that security officers consider taking unpaid leave with their union activities. No individual security officers were singled out and none were required to take leave. It appears that the request under review was companywide and not limited to the Respondent's security department. As counsel for the General Counsel has failed to offer sufficient evidence to establish a violation of the Act, I shall recommend to the Board that complaint paragraph 5(j) be dismissed.

7. Close supervision of Bizzarro

Complaint paragraph 5(k) alleges that on about January 21, 2012, the Respondent, through Paul Baker, more closely supervised Bizzarro because of his support for the Union. According to the testimony of Francis Bizzarro, on January 21, 2012, which was approximately a week after the confrontation with Paul Baker near the time clock, he was working in the Margaritaville Casino when Baker approached him and asked if he was "on post." Bizzarro responded that he was in the Margaritaville Casino, which was his post, so "yes," he was on post. He then observed Baker making a phone call. Apparently at about that same time, Bizzarro needed to waive supervisor Willis over for help with an "undesirable." After the undesirable was removed from the property, Bizzarro asked Willis why he had been in the area. Willis allegedly said that he was in the area because he had received a phone call from Baker and knew that the two men had just had a conversation. Bizzarro testified that he explained his recent conversation with Baker to Willis, who then responded that Bizzarro "shouldn't piss off the vice president of operations." Willis then left the area.

In his posthearing brief, counsel for the General Counsel contends that Baker's questioning of Bizzarro as to whether he was on his post and the follow up presence of Willis in the area establishes that management was more closely supervising Bizzarro because of his union activities. However, Baker and Willis tell a somewhat different story than Bizzarro.

Baker credibly testified that he spends a significant amount of time daily doing a "walkabout" around the properties that he supervises. During such a walk around in January 2012 in the Margaritaville Casino, he observed Bizzarro and another security officer standing together. He asked both officers whether this was their post. They answered in the affirmative, to which Baker responded, "Make sure you walk around and interact with guests out here on the floor." Baker then walked away. He testified that he did not call Willis during this walk around, and he was not intoxicated.

Willis also contradicts Bizzarro, testifying that he was making his rounds through the Margaritaville Casino when Bizzarro waived him over. According to Willis, Bizzarro told him that Baker had recently approached him and that Baker was "intoxicated and belligerent" and had told him that he shouldn't be standing around, but needed to be patrolling his area. Willis denied telling Bizzarro that he had recently spoken with Baker and denied that he told Bizzarro that he should not "piss off" Baker. Willis testified that Bizzarro's complaints about Baker were "above my pay grade," and so he immediately passed the information on to security director Golebiewski. By his pay grade remark, Willis was obviously saying that a complaint that Baker, HIFOB and the Respondent's vice president of operations and assistant general manager, was intoxicated was potentially such a sensitive matter that it needed to go up the chain of command to those in the organization who had more authority than he had.

I believe this is one of those instances where Bizzarro has exaggerated and embellished his testimony. Obviously, there was some conversation between Bizzarro and Baker, and subsequently between Bizzarro and Willis. I believe that Willis' testimony is more inherently plausible, and, therefore, I credit specifically his denial that he had a phone conversation with Baker that precipitated his appearance in the Margaritaville Casino. Further, both Baker and Willis credibly testified that they spend considerable time making rounds through the properties that they supervise. That is only logical. Therefore, regardless of the words spoken between Bizzarro and Baker and then between Bizzarro and Willis, there is insufficient evidence that either Baker or Willis were specifically observing Bizzarro, or that they were more closely supervising him because of his union or other protected conduct.

Bizzarro is highly suspicious of the Respondent's actions towards him. From the findings that I have made, it appears that there is some good reason for him to be so, specifically

regarding his union and protected concerted activities. However, I do not believe this is one of those instances. Accordingly, I shall recommend to the Board that complaint paragraph 5(k) be dismissed.

8. The Respondent's bulletin boards

It is alleged in complaint paragraph 5(l) that since October 2011, the Respondent has discriminatorily restricted security officer employees' access to the Respondent's bulletin boards in the preshift briefing room because they were engaged in union and other protected concerted activities.[14] However, I found the evidence offered by the General Counsel's witnesses to be very confusing regarding the number of bulletin boards, the location of those bulletin boards, and the general availability of those bulletin boards.

All witnesses seem to agree that there are three bulletin boards in the immediate vicinity of the preshift briefing room used by the security officers. It appears that one bulletin board is within the room, a second just outside the room near the time clock, and a third some small distance away. According to the testimony of security officer Rudy, the board in the briefing room is on the "back wall," the second board is outside the room "to your right," and the third is outside the room, "to your left." He testified that a locked "glass case" was placed around the second board in December 2011, "just before New Year's." Rudy claims that since that time he has seen anti-union fliers posted on the locked bulletin board, but no pro-union fliers. The third bulletin board, which is also outside the room remains unlocked and contains no postings regarding the Union, in favor of or against. Only work-related matters are posted on this board.

It appears from counsel for the General Counsel's posthearing brief that the General Counsel is complaining that while the board in the briefing room remained available for the posting of prounion materials, such materials were frequently subject to being summarily removed and/or defaced. Further, he complains that the second board, which was placed under a locked glass case, is no longer available for the posting of pro-union materials.

It is undisputed that nonwork related information has traditionally been posted on the bulletin board inside the briefing room, including fantasy football, birthday fliers, and personal items for sale. A number of security officers, including Bizzarro, testified that prounion fliers were placed on this board. However, they complain that in short order the fliers were either removed or altered with negative writings. It is important to note that neither Bizzarro nor any other witness was able to testify as to who was tampering with the prounion fliers, and no evidence was offered to establish that the Respondent was behind such tampering. Bizzarro testified that over the course of time, he posted about ten union fliers on this board. Although he did not specifically say so, the implication was that all were tampered with at some time after posting. Bizzarro does acknowledge that in one instance where a flier was removed, he went to a security supervisor, Janice Miller, and asked for permission to make a copy, presumably on the Respondent's equipment, and to repost the flier. He was given that permission.

In my view, counsel for the General Counsel has failed to establish that the Respondent was somehow responsible for tampering with the prounion fliers posted on the bulletin board in the briefing room. There is no evidence that management removed union materials or authorized their removal. *Holly Farms Corp*., 311 NLRB 273, 274 (1993) ("There is no evidence that the Respondents knew about the union notices, removed them, or authorized their removal. Under the circumstances, we reverse the judge and find that the Respondents did not unlawfully remove union literature from the bulletin boards.").

It is unclear to me whether the bulletin board outside the briefing room was available for the posting of union materials prior to the time that the glass cover was placed over it. After that time, it was apparently not available for the posting of union materials, as it was locked and the security officers did not have a key. Bizzarro testified that after the cover went on, postings on that board were limited to business matters and to antiunion materials. Further, he testified that after the glass cover was placed on the board, he requested permission several times from Supervisor Cedric Johnson to post prounion materials on this board. However, he never received permission.

Counsel for the General Counsel contends that: because the Union's materials were tampered with when posted on the bulletin board in the briefing room; and because the Union's materials could not be posted on the board with the locked glass case; and because the Respondent was able to post antiunion materials, which were not tampered with, on both the bulletin board in the briefing room and the one under glass, that this constitutes an unlawful discriminatory restriction based on union activity. I disagree.

The bulletin board in the briefing room, where the security guards regularly congregated, was available for the posting of prounion materials. Such materials were in fact frequently posted there. As I have already concluded, there is no evidence that the Respondent was responsible for the tampering with such materials. There is also no evidence that Bizzarro or other officers were in any way limited in the number of materials that they could post on this board, and they were able to replace materials that were either removed or defaced. By making this board available for the posting of prounion materials, the Respondent was satisfying its obligation under the act not to discriminate on the basis of union activity. See *Central Vermont Hospital,* 288 NLRB 514 fn. 2 (1988).

In my view, the Respondent was not obligated to make a second bulletin board, which was under a locked glass case, also available for the posting of union materials. The evidence does not establish that this board was used for the posting of prounion materials even prior to the placement on the board of that

[14] At the commencement of the hearing, counsel for the General Counsel moved to amend the complaint by filing a notice of intent to amend consolidated complaint. That motion sought to add paragraphs 5(l), (m), and (n) to the complaint. (GC Exh. 1(q).) I permitted the proposed amendment over counsel for the Respondent's objection because the allegations in the proposed amendment were closely related by substance and time to the other allegations in the complaint, and because I determined that allowing the amendment would not prejudice the Respondent in the presentation of its case.

locked case.[15] Therefore, counsel the General Counsel has failed to offer sufficient evidence that the Respondent's actions discriminatorily restricted security officer access to posting information on its bulletin boards because those officers were engaged in union and other concerted activity. Accordingly, I shall recommend to the Board that complaint paragraph 5(l) be dismissed.

9. Creating the impression of surveillance on October 7, 2011

Complaint paragraph 5(m) alleges that on about October 7, 2011, the Respondent, by its agents, in its preshift briefing room, created an impression among its employees that their union and concerted activities were under surveillance by the Respondent. The facts surrounding this allegation are not in dispute. Within the first week that Bizzarro was distributing union authorization cards, a security officer gave management a blank card and identified Bizzarro as the chief union organizer. Immediately thereafter, the Respondent prepared an antiunion flier containing a copy of the union authorization card, with a circle drawn around the place for an employee to sign, and an admonition regarding signing. This antiunion flier was distributed at the preshift briefing on October 7. Various security officers testified that the flier was unaccompanied by any explanation from management as to how the card was obtained.

Counsel for the General Counsel argues in his posthearing brief that as the organizational campaign was in its infancy, where it was most vulnerable to threats and the impression of surveillance, the distribution of copies of blank authorization cards, without explanation of how they were obtained by management, would reasonably give employees the impression that the Respondent was watching their union activity. Cf. *Camaco Lorain Mfg. Plant*, 356 NLRB 1182, 1183–1184 (2011). I agree.

As I have said a number of times, Bizzarro's involvement in the campaign became an "open secret." Still, there is nothing in the record evidence to suggest that individual authorization card signers did so openly, or that they wanted the Respondent to be aware of their involvement in the campaign. As management gave no explanation as how it came to possess a blank union card, security officers might reasonably have feared that the Respondent was spying on their union activity. *Mountaineer Steel, Inc.,* supra. Employees have the right to be free of the concern that management is peering over their shoulders to watch their protected activity. *Conley Trucking*, supra, quoting *Fred'k Wallace & Son, Inc*., supra. Such conduct by the Respondent could certainly chill the willingness of employees to engage in Section 7 activity.

Based on the above, I conclude that the Respondent's conduct in distributing fliers containing a copy of a blank union authorization card constituted the unlawful impression of surveillance as it interfered with, restrained, and coerced employees in the exercise of their union activity. Accordingly, the Respondent has violated Section 8(a)(1) of the Act, as alleged in complaint paragraph 5(m).

[15] It should be noted that while the complaint allegation in par. 5(l) states that the unfair labor practice has been occurring since about October 2011, the locked case was not placed on the bulletin board outside the briefing room until late December 2011.

10. The beer pong incident

It is alleged in complaint paragraph 5(n) that about mid-November 2011, the Respondent, by Eric Golebiewski, in the O'Sheas Casino, near the beer pong area, interrogated its employee about the employee's union sympathies. This allegation involves a brief conversation between Eric Golebiewski and security officer Ty Evans. Not especially surprising, the two men disagree over what was said.

According to Evans, in mid-November he was on duty at the O'Sheas Casino near the beer bong area when Golebiewski approached him and asked what his "opinion was about the Union, of the union issue." According to Evans, he replied that, "I haven't made up my mind." He testified that at that time he had not decided whether he supported the Union or not. Upon hearing Evan's response, Golebiewski simply walked away, and that ended the conversation.

Golebiewski testified that in mid-November he ran into Evans in O'Sheas near the beer bong area. As was his practice when walking through the casinos, Golebiewski asked some routine questions such as, "How are you doing?" and "How is the "beer pong going?" He denies that they had any conversation about the Union. Counsel for the Respondent argues in his posthearing brief that Evans' testimony is not credible, and that he is simply embellishing the conversation that the two men had.

Earlier in this decision I explained at length why I found Golebiewski's testimony incredible. This is another such instance. When I consider the record as a whole, it is clear to me that Golebiewski took very personally the security officer's campaign to organize on behalf of the Union. He apparently felt that their action was a reflection upon him as the security director. His statements and conduct at the highly unusual four hour preshift meeting on October 14, 2011, show the depth of his feelings regarding the union campaign. In his own mind, as reflected by this testimony, he turned the employees' desire for union representation into a campaign they were waging against him, asking them what problems they had with him.

Under such circumstances, I find it very plausible that Golebiewski took the opportunity in the beer pong area of O'Sheas to ask Evans what his opinion was of the Union. In his own mind, Golebiewski needed to know who was with him and who against. I have no reason to discredit Evans. To the contrary, as a current employee of the Flamingo who testified against the interest of his employer, there is every reason to assume that he was being truthful. The Board has frequently held that an employee who testifies against the interest of his current employer does so at his peril, and so may be entitled to the benefit of the doubt concerning the credibility of such testimony. See *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Federal Stainless Sink*, 197 NLRB 489, 491 (1972); *Flexsteel Industries,* 316 NLRB 745 (1995), enfd. 83 F.3d 419 (5th Cir. 1996).

Having concluded that Golebiewski asked Evans his opinion of the Union, I must determine whether such a question constituted unlawful interrogation. In determining whether a supervisor's questions to an employee about his union activities or sympathies were coercive under the Act, the Board looks to the "totality of the circumstances." *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel & Restaurant Employees*

Local 11 v. NLRB, 760 F.2d 1006 (9th Cir. 1985). In *Westwood Health Care Center*, 330 NLRB 935 (2000), the Board listed a number of factors considered in determining whether alleged interrogations under *Rossmore House* were coercive. These are referred to as "Bourne factors," so named because they were first set forth in *Bourne v. NLRB,* 332 F.2d 47, 48 (2d Cir. 1964). These factors include the background of the parties' relationship, the nature of the information sought, the identity of the questioner, the place and method of interrogation, and the truthfulness of the reply.

In the matter at hand, Evans was merely a rank and file security officer, while Golebiewski was the Respondent's security director, and Evan's ultimate supervisor. Therefore, he likely would have been intimidated by a question from Golebiewski on his opinion of the Union, which question seemed to come "out of the blue." Evans was working at the time, making his rounds, which was not the type of environment where he would normally expect to have to field such a question. Further, Evans' answer to the question was ambivalent, not surprising considering the discomfort that Evans must have felt in this one on one exchange with his boss.

Based on the "totality of the circumstances," I am of the view that Golebiewski's question to Evans regarding his opinion of the Union constituted unlawful interrogation. It would tend to reasonably interfere with, restrain, and coerce employees in the exercise of their Section 7 rights. Accordingly, I conclude that by its actions through Golebiewski, the Respondent has violated Section 8(a)(1) of the Act, as alleged in complaint paragraph 5(n).

11. Summary of findings

As is set forth above in this decision, I have found that the Respondent violated Section 8(a)(1) of the Act, as alleged in complaint paragraphs 5(b), (c), (e)(2), (3), (4), (5), (f)(1), (2), (g)(1), (h)(1), (3), (i), (m), and (n). Further, I have recommended that the Board dismiss complaint paragraphs 5(a), (d), (e)(1), (g)(2), (h)(2), (4), (j), (k), and (l).

CONCLUSIONS OF LAW

1. The Respondent, Flamingo Las Vegas Operating Company, LLC, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, International Union, Security, Police and Fire Professionals of America (SPFPA), is a labor organization within the meaning of Section 2(5) of the Act.

3. By the following acts and conduct the Respondent has violated Section 8(a)(1) of the Act.

(a) Threatening its employees with unspecified reprisals because the employees engaged in concerted activities.

(b) Threatening its employees with more strictly enforced work rules and job loss if they selected the Union as their collective bargaining representative.

(c)Threatening its employees with unspecified reprisals because the employees engaged in union activities.

(d) Threatening its employees with discipline or discharge if they selected the Union as their collective bargaining representative.

(e) Threatening its employees by informing them that they were disloyal because they supported the Union and engaged in union activities.

(f) Promulgating and enforcing an overly-broad and discriminatory work rule prohibiting its employees from engaging in concerted activities.

(g) Promulgating and enforcing an overly broad and discriminatory work rule that its employees had to follow the chain of command to resolve the employees' complaints.

(h) Interrogating its employees about their union membership, activities, and sympathies.

(i) Soliciting its employees' complaints and grievances, and promising them improved terms and conditions of employment to dissuade them from supporting the Union.

(j) Promising its employees improved terms and conditions of employment by informing them that an objectionable supervisor had been transferred from its facility to dissuade them from supporting the Union.

(k) Creating an impression among its employees by printed communication that their union activities were under surveillance.

(l) Creating an impression among its employees that their union activities were under surveillance by describing employees who supported the Union.

(m) Creating an impression among its employees that their union activities were under surveillance by displaying a blank union authorization card.

(4) The above-unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

(5) The Respondent has not violated the Act except as set forth above.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designated to effectuate the policies of the Act.

The Respondent shall be required to post a notice that assures its employees that it will respect their rights under the Act. In addition to physically posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring*, 356 NLRB 6 (2010).

In his posthearing brief, counsel for the General Counsel requests that appropriate notices be posted not only at the Flamingo property, but at all five HIFOB properties, including Harrah's, Imperial Palace, Flamingo, O'Sheas, and Bills. As was mentioned earlier in this decision, approximately 120 security officers regularly rotate through three of those properties, Flamingo, Bill's and O'Sheas, pursuant to a written posted schedule. While 50 to 70 of those officers are assigned to the Flamingo, they are part of the overall rotation through the three properties. Further, although it is not controlling, in the Decision and Direction of Election issued by the Regional Director for Region 28 in Case 28–RC–069491 (CP Exh. 1), the Regional Director found there to be a significant community of interest between the security officers working at the Flamingo, O'Sheas, and Bill's properties, and directed an election among the officers working at those three properties.

It is clear to me from the record evidence that the security officers exposed to the Respondent's numerous unfair labor practices were the security officers working at the Flamingo, O'Sheas, and Bill's properties, but not the officers working at Harrah's or the Imperial Palace. Despite the fact that all five properties are considered one "pod" under Caesars Entertainment and are referred to collectively as HIFOB, there is apparently no regular transfer or interchange of security officers working at Harrah's and the Imperial Palace, with the officers working at the other three properties. As only the security officers working at the Flamingo, O'Sheas, and Bill's were exposed to the Respondent's unfair labor practices, I will direct that notices be posted only at those three properties. Posting at those three properties will effectuate the purposes of the Act.

[Recommended Order omitted from publication.]